IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5552 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ARVINDBHAI MEGHJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5552 of 2002

MR DM THAKKAR for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/07/2002

ORAL JUDGEMENT

Heard learned counsel for the petitioner Mr. DM Thakkar, learned AGP Mr.HH Patel for the respondent-State and Ms PJ Davawala learned Addl. Central Govt. Standing

Counsel for the respondent no. 4.

The affidavit-in-reply filed by the District Magistrate, Bhavnagar Mr. KA Patel, District Magistrate, Bhavnagar and Mr. PM Asari, Deputy Secretary to the Govt. of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar tendered by ld. AGP are taken on record.

By means of filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the detention order passed by the District Magistrate, Bhavnagar dated 21.5.2002 in exercise of the powers under sub section 2 of Section 3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the PBM Act).

The petitioner has been supplied with the grounds of detention on 22.5.2002 when the order of detention was executed. The grounds for detention reveal that the petitioner was indulging in the activities in adulteration of patrol by adding neptha and has developed the activities to earn higher margin of profit. Undisputedly, the petitioner was not holding the valid licence to deal with the business of Neptha. The rented business premises of the petitioner was raided by the Govt. officials and the stock of neptha worth Rs. 79,146/ was seized along with the barrels etc. The raiding party had drawn the sample from the stock of neptha and the same was sent for testing to the laboratory and ultimately it was found that the material seized by the authority was petroleum hydro carbon solvent and the same was not found patrol by the testing laboratory.

Ld. counsel for the petitioner has taken me through the entire memo of petition. The petitioner has challenged the legality and validity of the order of detention on number of grounds as well as continued detention. However, during the course of oral submission, ld. counsel Mr. Thakkar has concentrated his arguments mainly on two points. The first point is that the delay in passing the order of detention vitiates the validity of the order and such an order cannot sustain in eye of law in view of the settled legal position.The second main point argued by Mr. Thakkar is that in the month of February, 2002 or on the date of order of detention, there were no fixation of price of neptha, so the allegation of black marketing of petroleum products cannot sustain and it can be said to be a

criminal wrong punishable under the Essential Commodities Act and this being a solitary incident, the order of detention could not have been passed.

While developing the point no.1, that is delay in passing the order of detention, Mr. Thakkar has drawn the attention of this court to certain dates from the record available to the Court. Undisputedly, the order of detention passed on 21.5.2002 which has been executed on 22.5.2002. The business premises of the petitioner was raided on 14.2.2002 and statements of all relevant witnesses were recorded on that very day. The sample drawn from the liquid seized was also to be sent to the laboratory and, therefore, the sample was drawn on the date of seizure i.e. 14.2.2002. One litre colourless liquid said to be suspected neptha was drawn as sample in glass-bottle but this sample was not sent to the laboratory till 13.3.2002.There is no explanation as to why this sample was not sent for one month. The testing laboratory has expressed its opinion on 27.3.2002. So, immediately after 27.3.2002 the authority could have passed the order of detention but no prompt action was taken for the reasons best known to the detaining authority. It has been pointed out by Mr. Thakkar that even as per the Govt. directions and the Control Order, the sample was to be sent for analysis within 10 days from the date of drawing of the sample, even than the authority took time of around 30 days. The grievance of Mr. Thakkar is not against the violation of Statutory requirement but the grievance is that the delay caused in sending the sample to the laboratory at least could have explained by the detaining authority reasonably. In the same way, it is argued that the attempts to explain the delay made by the detaining authority in para-16 of the affidavit-in-reply in reference to allegations made in para-3(v) of the petition, but on plain reading of the averments made in para-16, the court can positively held that the contents of para-16 cannot be accepted as any good or reasonable explanation. No formality has remained after the recording of the statement of the detenu on 3.4.2002, so that order of detention could have been passed on the next day i.e. 4.4.2002 at least within a day or two or maximum in that very week. The say of the detaining authority is that "time which is consumed for following the necessary procedure cannot be considered as an unexplained delay", but the affidavit is completely silent that what time was consumed in following the necessary procedure after 3.4.2002. It is rightly pointed out from page 19 of the compilation, which is the order of detention, that this order of detention was ready in the month of April, 2002, but the

same has been signed on 21.5.2002. On four different places,in a one page of the order, the authority has corrected the month from 4th to 5th by over-writing but at two places, the figure four is legible under figure five. Of course, to appreciate the submission in this regard, the court has used magnifying glass available with the Court. From other pages of the compilation supplied to the detenu gets support.

It is submitted that the detaining authority is supposed to pass the order of detention promptly because the order is of preventive nature. If the order is not proximate to the cause,than it becomes violative of the guarantee flowing from Article 22(5) of the Constitution of India. It is required to refer more than one decision of this court and/or the Apex court in support of this argument, but Mr. Thakkar has placed reliance on one decision in the case of Anand Prakash vs. State of U.P. reported in AIR 1990 SC p. 516. Para-12 of the decision is relevant where the Apex Court has observed that if the detention is not proximate to the cause than it would violate the order itself. So, the order of detention should be held bad and requires to be quashed.

Mr HH Patel learned AGP in response of the argument advanced on the point of delay, has cited the decision in the case of Jeevan G. Tandel vs. Union of India & Ors., reported in 1996(3) GLR p. 713 and has submitted that in this cited decision, the court has held that the delay of one year in passing the order cannot be said to be fatal. This cited decision refers the case of detenu who was detained under the COFEPOSA, 1974. After referring the relevant para-10 (B) of the cited decision, the Court is of the view that this decision would not help the respondents in the present case because on facts, the Court held that the delay caused in passing the order or say in other word, the time taken in passing the detention order by the detaining authority has been explained satisfactorily and in all cases whether delay is found explained, obviously, it would not vitiates the validity of the order only on that count. The present case is of unexplained delay in a solitary case of Essential Commodities Act or any Control Order when is made a base in passing the order of detention, than point of proximity should be considered as a very relevant aspect and, therefore, in such a case, the delay caused in passing the order of detention cannot sustain.

The order of detention is therefore, requires to be quashed on this sole ground of unexplained delay in passing the order of detention. It is not necessary to

discuss the other points advanced by the learned counsel for the petitioner.

In the result, this petition is allowed. The impugned order of detention passed by the District Magistrate,Bhavnagar dated 21.5.2002 is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)
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